RHYTHMS

FILE COPY ORIGINAL

RECEIVED ORIGINAL

FEB 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 6, 2001

REDACTED – FOR PUBLIC INSPECTION

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., CY-B402
Washington, D.C. 20554

Dear Secretary Salas:

Pursuant to the Commission's January 16, 2001, Public Notice requesting comments on the application by Verizon New England Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts (CC Docket No. 01-9), Rhythms is filing the confidential portions of its submission and a redacted version of the entire submission. As a result, enclosed are:

(a) one copy of only the portion(s) of the submission that contain confidential information, exclusive of the remainder of the submission (contained in an envelope marked "A"); and
(b) one original and two copies of the entire confidential submission in redacted form (contained in an envelope marked "B").

Please contact me at 202/387-4077 if you have any questions concerning these materials.

Sincerely yours,

Kimberly A. Scardino

Kimberly A. Scardino J.C.D.

Enclosures
cc: Susan Pie (12 copies of redacted submission only)
International Transcription Service (1 copy of redacted submission only)

No. of Copies rec'd 0+2
List ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

FEB 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long Distance), NYNEX Long Distance Company (d/b/a/ Verizon Enterprise Solutions), and Verizon Global Network, Inc. (collectively "Verizon") for Authorization To Provide In-Region, InterLATA Services in the State of Massachusetts

Docket No. 01-9

RHYTHMS NETCONNECTIONS INC.
COMMENTS IN OPPOSITION TO VERIZON'S APPLICATION
FOR 271 AUTHORITY IN THE STATE OF MASSACHUSETTS

REDACTED – FOR PUBLIC INSPECTION

Kimberly A. Scardino
Assistant General Counsel
Rhythms Links, Inc.
1625 Massachusetts Ave., NW
Washington, D.C. 20036
202.387.4077
202.955.6460 facsimile

Dated: February 6, 2001

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon New England, Inc.,	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a/ Verizon Long Distance), NYNEX	)	Docket No. 01-9
Long Distance Company (d/b/a/ Verizon	)	
Enterprise Solutions), and Verizon Global	)	
Network, Inc. (collectively "Verizon") for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in the State of	)	
Massachusetts		

Rhythms NetConnections, Inc., and its affiliate, Rhythms Links Inc. (collectively "Rhythms"), submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice issued on January 16, 2001, in connection with the application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc (collectively "Verizon") for authorization to provide in-region, interLATA service in the State of Massachusetts, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. Pursuant to the Commission's Public Notice issued on January 16, 2001, Rhythms requests that its prior comments and submissions filed in CC 00-176 be incorporated into this proceeding as well.

INTRODUCTION

On September 22, 2000, Verizon submitted its initial application for authorization to provide interLATA services in the State of Massachusetts with the Commission. On December 18, 2000 Verizon withdrew that application. Issues relating to whether Verizon provided non-discriminatory access to xDSL loops were the impetus behind that withdrawal.[1] On January 16, 2001, Verizon resubmitted its application to provide interLATA services in the State of Massachusetts. The principle focus of Verizon's resubmitted comments is on the provision of xDSL loops in Massachusetts.

As Rhythms stated in its prior comments filed in Docket 00-176,

> Rhythms' interest in this matter is to see that the telecommunications market in Massachusetts is irreversibly open to competition for advanced data services. As Rhythms does not provide long distance services, it has no interest in blocking Verizon's entry into long distance in Massachusetts. Instead, Rhythms seeks to ensure that before Verizon is given free reign to provide long distance services -- and therefore no longer has the specter of section 271 approval looming as a motivator -- that Verizon's nondiscrimination obligations are fulfilled and the Massachusetts market is fully and irreversibly open to competition.[2]

The same holds true today. Rhythms' involvement in this 271 process is triggered by very real business needs, not from any competitive desire to keep Verizon from providing long distance services to the consumers of Massachusetts. Rhythms does not offer long distance services. Instead, Rhythms provides high-speed broadband services, primarily using xDSL technology, to the consumers of Massachusetts and elsewhere. Rhythms' sole interest in this proceeding relates to ensuring that Verizon provides Rhythms with non-discriminatory access to the network elements needed to provide xDSL services to the consumers of Massachusetts.

---

[1] "Verizon to Supplement Massachusetts Long Distance Application", released Dec. 18, 2000, available at *http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=4708*

[2] Rhythms' Comments in Docket 00-176 at p. 2.

The burden of proof in this proceedings rests with Verizon,[3] which must demonstrate that it has "fully implemented the competitive checklist"[4] and "is offering interconnection and access to network elements on a nondiscriminatory basis."[5] Verizon must provide CLECs with interconnection and access to network elements in "substantially the same time and manner" that it provides them to itself in connection with its own retail offerings.[6] Where no retail analogue exists, Verizon must demonstrate that the access it provides to CLECs offers them "a meaningful opportunity to compete."[7] Both the "substantially the same time and manner" standard and the "reasonable opportunity to compete standard" are a means of determining whether Verizon is indeed providing nondiscriminatory access to interconnection and network elements.[8]

As Rhythms discussed in its comments filed in Docket 00-176, the Commission's *UNE Remand Order*[9] and *Line Sharing Order*[10] establish unbundling obligations with which Verizon must comply prior to being granted 271 approval in Massachusetts. The same holds true for the Commission's recently issued *Line Sharing Reconsideration Order*.[11] *The Line Sharing*

---

[3] *In the Matter of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (rel. Dec. 22, 1999) ("*Bell Atlantic New York Order*") at ¶ 42 ("the BOC applicant retains at all time the ultimate burden of proof that its application satisfies all of the requirements of section 271.") and ¶ 52; *In the Matter of Application of SBC Communications Inc. To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 (rel. June 30, 2000)("*SWBT Texas Order* ") at ¶ 52.

[4] *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44

[5] *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

[6] *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

[7] *Bell Atlantic New York Order* at ¶ 44; *SWBT Texas Order* at ¶ 44.

[8] *Bell Atlantic New York Order* at ¶ 45; *SWBT Texas Order* at ¶ 45 (In both of these Orders, the Commission specifically noted that it did not view the "'meaningful opportunity to compete' standard to be a weaker test than the 'substantially the same time and manner' standard.").

[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC-99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999)("*UNE Remand Order*").

[10] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order, and Fourth Report and Order, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

[11] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order on Reconsideration in CC Docket No., 98-147, Fourth Report and Order on

Reconsideration Order does not establish new obligations, but instead reiterates and affirms Verizon's obligations in providing access to the high-frequency portion of the local loop that were established in the Commission's *Line Sharing Order*. For example, *the Line Sharing Reconsideration Order* affirmed that Verizon must provide, nondiscriminatory access to the high-frequency portion of the local loop, despite whether the transmission facility of the loop is copper or fiber.[12] Before the Commission can grant Verizon's 271 application in Massachusetts, it should be assured that Verizon fully complies with all of its unbundling obligations, including those that were reiterated in *the Line Sharing Reconsideration Order.*

In these Comments, Rhythms focuses on three core issues, where, unfortunately, Verizon is still deficient. First, Verizon is not fully prepared to offer line sharing to CLECs in Massachusetts and elsewhere, despite the Commission's long-past June 6, 2000 deadline. Because Verizon has failed to properly wire its central offices in Massachusetts (and other states) to support line sharing, Rhythms continues to face significant obstacles in offering line sharing services to the consumers of Massachusetts. At the same time, however, Verizon's separate data affiliate is processing significant volumes of line-shared orders. This situation must be remedied prior to Verizon receiving 271 approval.

Rhythms' comments also focus on the data submitted by Verizon to establish its compliance with checklist items 2 and 4 -- the provision of xDSL loops. Verizon one again has manipulated the data in an attempt to conceal what the data unequivocally reveals -- Verizon is not providing CLECs with xDSL loops within the six-day standard interval. Verizon's excuses did not hold water before and should not be given any credence now. In fact, based on Rhythms'

Reconsideration in CC Docket No. 96-98, FCC 01-26 (Rel. January 19, 2001) (*"Line Sharing Reconsideration Order"*).

[12] *Id.* at ¶ 10.

assessment, some of the conclusions reached by Verizon in its attempt to reconnoiter the data are simply incorrect

Finally, Rhythms' comments discuss Verizon's failure to tariff a "plug and play" offering for CLECs as it was directed to do by the Massachusetts D.T.E. Instead of filing the "plug and play" tariff offering as it was directed to do in September, 2000 – well over 4 months ago – Verizon continues to litigate this issue. As the Commission is aware, with the deployment of Next Generation Digital Loop Carrier ("NGDLC") systems, which are capable of supporting xDSL services, placing CLEC-owned line cards with DSLAM capabilities ("plug and play") is in many cases the sole option available for CLECs to continue to offer xDSL services to customers served by NGDLC systems. Until Verizon stops litigating this issue in Massachusetts and files its tariff, as it was directed to do over 4 months ago, CLECs have no means of assessing whether Verizon's offering is indeed non-discriminatory.

I. In Failing To Fulfill its Obligations To Rewire Central Offices for Line Sharing, Verizon has Discriminated Against Rhythms and Allowed its Separate Data Affiliate to Gain a Significant Competitive Advantage in Massachusetts and New York.

Verizon has yet to complete the central office ("CO") wiring work necessary to enable Rhythms to place commercial volumes of line sharing orders in Massachusetts and New York. Verizon's failure to properly wire all of the central offices in Massachusetts and New York for which Rhythms submitted applications some ten months ago has placed Rhythms at a competitive disadvantage vis-a-vis Verizon's separate data affiliate. This issue is the most significant competitive issue facing Rhythms today in the Verizon region, and one that must be sufficiently resolved prior to Verizon's entry into the long distance market.

In its Supplemental Filing, Verizon claims that its line sharing performance is strong and that it is processing line sharing orders in significant volumes.[13] Verizon is correct that it is processing significant volumes of line sharing orders, however, it is doing so for its separate data affiliate (VADI) and not CLECs.[14] Verizon admits that the volume of line sharing orders received from CLECs in Massachusetts has been relatively small,[15] but it fails to explain *why* such volumes have been small. While Verizon acknowledges that it has had and continues to have CO-build issues,[16] such acknowledgments to date overstate the amount of work that Verizon needed to complete as part of the project management schedule, and also attempt to minimize the impact of the harm caused by Verizon's failure to comply with the regional project management plan ordered in New York.[17]

As explained in the Supplemental Declaration of Robert Williams, attached hereto as Exhibit 1, Rhythms' business plan was to be ready to offer line sharing out of all of the central offices where it was collocated by June 6, 2000 -- the FCC-imposed deadline for ILECs to implement line sharing. Verizon committed to Rhythms that if Rhythms placed its own splitters in its collocation cages and elected to reuse existing cable and pairs, that it would be able to support line sharing out of all designated COs in the region by June 6, 2000.[18] Rhythms made a decision to pursue the option that would allow it to get to market the quickest so it chose to locate its splitters in its collocation arrangements and reuse existing cable and pairs. In

[13] Supplemental Filing at p. 28.
[14] *See* Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 144.
[15] *Id.* at ¶ 8.
[16] *Id.* at ¶¶ 136-138.
[17] *See* Order Adopting Bell Atlantic-New York Line Sharing Schedule for Provision of Digital Subscriber Line Service, issued and effective April 24, 2000, attached to Williams' Declaration filed in Docket 00-176 as Attachment B.
[18] Williams Supplemental Declaration at ¶ 5.

accordance with the project management plan established in NY, Rhythms submitted the requisite applications with Verizon to complete the necessary rewiring work.[19]

The only central office work Verizon needed to do to accommodate line sharing for Rhythms was to re-terminate 200 existing cable and pairs in each of the specified central offices. For Rhythms, Verizon did not need to install splitters in any central offices or wait for Rhythms to deliver materials to Verizon. Thus, Verizon's excuses for why it failed to complete work promised under the project management plan do not apply to Rhythms.[20]

On or about June 6, 2000, Verizon represented to Rhythms that it had completed the cabling work necessary to support line sharing in all of the central offices and that it was ready for Rhythms to begin submitting line-sharing orders.[21] Soon thereafter, Rhythms began submitting orders for line sharing across the Verizon region and quickly learned that Verizon's central office wiring work was not complete.[22] In the period from September through November 2000, Rhythms' orders were beginning to backlog in all states throughout the Verizon region. Because Verizon did not respond to Rhythms' escalations in a timely fashion, Rhythms stopped sending in orders in central offices that it discovered were either not wired for line sharing or wired incorrectly.[23]

After the specific wiring issues were uncovered,[24] Rhythms demanded that Verizon go out and inspect all of its central offices to determine that the wiring had been completed correctly.[25] In October—six months after Rhythms had submitted applications for the central

[19] *Id.*
[20] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 136.
[21] Williams Supplemental Declaration at ¶ 8.
[22] *See* Declaration of Robert Williams filed in Docket 00-176 at ¶¶ 38-42.
[23] Williams Supplemental Declaration at ¶¶ 9-11.
[24] *Id.* at ¶ 10.
[25] *See* Attachment D to Williams Declaration filed in Docket 00-176 (minutes from October 6, 2000 meeting between Verizon and Rhythms).

office line sharing wiring work—Verizon committed to engage in "Quality Inspections" of its central offices. These Quality Inspections did not take place in a timely fashion and apparently have only recently been completed.[26] For the entirety of the months of September, October, November and December 2000 and January 2001, while Rhythms was barred from submitting orders in certain COs in New York and Massachusetts, Verizon, either through its advanced data affiliate or itself (depending on the timing of implementation of the affiliate in Massachusetts), was cranking up volumes of line sharing orders.

Verizon attempts to justify its failure to complete the necessary CO work by the fact that it agreed to an "aggressive schedule" outside of the normal collocation interval to complete the work for CLECs. It is important to keep in mind that Rhythms submitted its applications more than 200 business days ago, nearly triple the duration of Verizon's standard collocation interval of 76 business days.

Verizon is incorrect when it states that it has completed all of the collocation work necessary for line sharing as requested by CLECs in Massachusetts.[27] Three (3) central offices in Massachusetts are still not complete and one (1) is pending database verification.[28] In New York, eight (8) are not complete and five (5) are pending database verification.

At this time, Rhythms is not able to serve customers out of four (4) central offices in Massachusetts and thirteen (13) in New York. Rhythms' inability to serve certain customers in Massachusetts and New York comes at no expense to Verizon. Because the applications Rhythms submitted to Verizon as part of the project management plan were not standard collocation applications, Verizon's performance is not subject to bill credits under the

[26] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 138 ("Verizon has completed 86 percent of such inspections in Massachusetts, and expects to finish the few remaining inspections by the end of the month.")
[27] *Id.* at ¶ 135.

Performance Assurance Plan in New York. Similarly in Massachusetts, Verizon is not forced to compensate Rhythms for the loss it has incurred.

While Verizon has completed "quality inspections" in the central offices and is in the process of completing the follow-up generated by those inspections, Rhythms has little assurance that Verizon will respond in a timely fashion to any future issues uncovered in central offices for which Rhythms has yet to submit orders.[29]

Verizon is aware of the central office wiring problems Rhythms has faced and is currently facing in Massachusetts and New York. Despite its knowledge, Verizon has failed to act in a timely fashion; it failed to implement a corrective action plan for months. While Verizon now has a plan to fix the problems, the plan comes a day late and a dollar short. Rhythms has already suffered the consequences.

II. Verizon is Completing xDSL Loop Orders Outside of the Standard Six-Business-Day Provisioning Interval.

As Verizon explains in its Supplemental Declaration, the Commission evaluates an applicant's performance "based on the totality of the circumstances," and "an apparent disparity in performance in one measure, by itself, may not provide a basis for finding non-compliance with the checklist" if the disparity is not "large enough to be deemed discriminatory under the statute."[30] In addition, as Verizon points out, the Commission has explained that even statistically significant differences may be "non-cognizable under the statutory standard," because they may "have little or no competitive significance in the marketplace,"[31] or may be traced to CLEC behavior or other "factors outside of [the applicant's] control"[32]

---

[28] Williams Supplemental Declaration at ¶ 12.
[29] *Id.* at ¶ 14.
[30] *SWBT Texas Order* ¶ 58; Supplemental Filing at p. 6.
[31] *Bell Atlantic New York Order* ¶ 59.
[32] *Id.* at ¶ 202; Supplemental Filing at pp. 6-7.

Where, however, Verizon continues to fall short in an important area, such as on-time provisioning, the data must not be overlooked by this Commission. That is the case here.

Just as it did in its original application, Verizon highlights -- to demonstrate that its xDSL loop performance is "strong" -- its performance with respect to the "on time" measures (PR-4-14 through PR-4-18) and discounts the value of the completion interval measures (PR-2-02 and PR-3-10).[33] Verizon would like the Commission to believe that any apparent disparity in the data has little competitive significance and can be traced to CLEC behavior or factors outside of Verizon's control. In evaluating Verizon's performance, the Commission must give sufficient weight to the fact that Verizon's own performance data -- even adjusted every which way -- shows that it is not provisioning xDSL loops within the standard interval.

A. On Average, Verizon Completes CLEC xDSL Loop Orders Two Days Late

As Verizon reports, during September, October, and November 2000, on average, it provisioned DSL loops for CLECs where a dispatch was required in 8.32 days,[34] which is just over two days longer than the six-day standard. To make the Commission and CLECs feel better about Verizon's performance, Verizon notes that its retail ADSL orders requiring a dispatch were provisioned within an average of 8.48 days.[35] Thus, according to Verizon, its completion intervals in September through November 2000 were at parity with Verizon's retail service.[36] It makes no difference to Rhythms that it received "parity" with Verizon's retail service when "parity" means that Rhythms received its loops two days later than the standard interval.

---

[33] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶¶ 63-84.
[34] *Id.* at ¶ 75. Note that in calculating its performance, Verizon used the recently revised definition of PR-2-02, which allows Verizon to exclude loops requiring manual qualification.
[35] Other than attempting to justify its poor performance on provisioning xDSL loops by comparing it to its retail ADSL product, which is no longer appropriate per the revised definition of the metric, Verizon provides no special study on its performance pursuant to PR-2-02. *See* Joint Supplemental Declaration of Gertner and Bamberger (Declarants analyzed information used to calculate PR-6-01 and PR-3-10 metrics).
[36] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 83 and Attachment W.

As explained in the Supplemental Declaration of Robert Williams, even without delay, Verizon's current six business day interval for provisioning xDSL loops is an unnecessarily long interval.[37] Because the provisioning interval is already a lengthy timeframe, Rhythms routinely requests that Verizon complete its orders within the standard interval of six business days.[38] When Verizon does not complete an order within the six-business day interval, it forces Rhythms to extend the time interval for delivery of the line to the customer.[39] Moreover, completion of Rhythms' orders outside of the six-business-day interval could increase the potential for "no access" situations and force the end-user to stay home for two days (as opposed to just one day) to grant Verizon's technicians access to premise.[40]

B. Even Adjusted and Recalculated, Verizon's Performance Pursuant to PR-3-10 Still Shows Non-Compliance

In its Supplemental Application, Verizon attempts, unsuccessfully for the second time, to minimize the effect of its poor reported performance on the Percent Completed in 6 days measure (PR-3-10). Unlike its original application, Verizon's Supplemental Application includes the actual data used to calculate Verizon's performance on PR-3-10.[41] What is instructive is that the excuses Verizon offered in the first go around for why its performance looked so poor have not proven to be as significant as Verizon had previously represented.

<u>The Loop Qualification Exclusion</u>. In its original filing, Verizon claimed that CLECs failure to pre-qualify loops was skewing the performance results.[42] In its Reply Comments, Rhythms explained that Verizon's mechanized loop query tool does not provide Rhythms with all of the information that it needs to determine whether it can serve a given customer or not, and

---

[37] Williams Supplemental Declaration at ¶ 21.
[38] *Id.*
[39] *Id.*
[40] *Id.*

therefore, manual loop qualification is often necessary. Nonetheless, Rhythms consistently uses the mechanized query and only uses and pays for the manual query when the results of the mechanized query are inconclusive.

It is therefore no surprise to Rhythms to see the result of Verizon's study on this point, which show that Rhythms pre-qualified ****BEGIN PROPRIETARY ***** END PROPRIETARY**** of all of the loop orders it submitted in September, October and November 2000.[43]

Attachment E to the Lacouture/Ruesterholz Joint Supplemental Declaration shows that twenty-percent (20%) of all CLEC orders submitted in September, October and November 2000 had to be manually pre-qualified. Under the revised Carrier-to-Carrier measurements, Verizon is now permitted to exclude such orders from PR-3-10. In recalculating its performance pursuant to the revised definition, the results do not reveal the impact on this issue alone on the adjusted performance. Rather, in Attachment C to the Gertner/Bamberger Supplemental Declaration, Verizon recalculates its performance on PR-3-10 by also excluding instances where the CLEC requested an interval longer than six days, orders missed due to facility reasons, and orders impacted by the strike. In addition, Verizon only reported its adjusted performance in the aggregate[44] so Rhythms has no choice but to assume that, since only ****BEGIN PROPRIETARY *** END PROPRIETARY**** of Rhythms orders had to be manually

---

[41] *See* Attachment C to Joint Supplemental Declaration of Gertner and Bamberger.
[42] Verizon Application filed in Docket 00-176 at pp. 25-26.
[43] Attachment E to Supplemental Declaration of Lacouture and Ruesterholz. For those orders that Rhythms did not pre-qualify, it submitted a manual loop qualification request with Verizon. As Rhythms explained in its Reply Comments, because Verizon has yet to develop and implement a pre-order function that allows CLECs to manually qualify loops prior to submitting a local service request, CLECs have no choice but to submit orders to Verizon that require manual qualification.
[44] *See* Attachment C to Joint Supplemental Declaration of Gertner and Bamberger.

qualified during this time period, this issue had no appreciable difference on Verizon's performance on PR-3-10 with respect to Rhythms.

Exclusion for Facility Delays. The recently revised definitions to the Carrier-to-Carrier measurements permit Verizon to exclude from this measure loops that are missed due to facility reasons. In Attachment C to the Gertner/Bamberger Declaration, Verizon provides data on the orders it excluded from the recalculated PR-3-10 results due to a facility miss. Like the pre-qualification excuse, this issue does not appear to be as significant a problem as Verizon had previously represented. For example, in September, none of Rhythms orders were excluded due to facility misses.[45] In October and November, only two and five of Rhythms orders were excluded due to facility reasons, respectfully.[46] Again, because Verizon did not breakdown the result of the facility miss exclusion on a CLEC-aggregate or CLEC-specific basis, it is impossible to assess how significant of an issue facility misses have been on Verizon's reported performance with respect to PR-3-10.

Exclusions for Non-X-Coded Orders. Verizon explains that most of the orders excluded from PR-3-10 are excluded because the CLEC requested the provision of service in more than six days.[47] In Attachment C, Verizon includes a column marked, "Miscoded ATC," while although not specifically defined in the attachment, apparently means that the appointment type code was not correct. Attachment C is a specific study of the impact of five items—1) orders received after 5pm; 2) strike affected orders; 3) non-qualified loops; 4) facility misses; and 5) orders where the CLEC requested an interval beyond six-business days and did not X-Code the order. The first four items are specifically referenced in the heading of the chart labeled, "All

[45] *Id.* at p. 5.
[46] *Id.* at p. 34, 62.
[47] Gertner/Bamberger Joint Supplemental Declaration at ¶ 18.

Orders Included in the Metric PR-3-10 and Exclusions." Therefore, Rhythms assumes that "Miscoded ATC", which is the only remaining column in the chart, signifies orders where the CLEC requested an interval beyond six business days and did not X-Code the order. Assuming this is the case, Rhythms does not agree that it failed to X-Code all of the orders excluded in Attachment C.

A quick comparison of the data included in Attachment C with the data included in Attachment B (showing the desired due date of Rhythms orders submitted during the same time frame) reveals that Rhythms did not request longer intervals for all of the orders marked as "Miscoded ATC" in Attachment C. For example, for the month of October, Verizon marked Rhythms PON number ACI2000152886 as a "Miscoded ATC" and excluded it from the adjusted PR-3-10 performance.[48] In Attachment B, the data for the same PON number shows that on October 3, 2000 at 5:56pm, Verizon received an order from Rhythms with a desired due date of October 11, 2000, which is six business days from the date in which Rhythms submitted the order.[49] Verizon did not complete the order until October 24, 2000, which is fifteen (15) days after the order was placed.[50]

For the month of November, based on the data included in Attachment B, two of Rhythms' orders marked as "Miscoded ATC" in Attachment C and excluded from the adjusted PR-3-10 results, do not appear to be valid exclusions. According to the data listed for Rhythms PON number ACI2000166011, Verizon received the order at 11:27am on October 26, 2000 with a requested due date of November 3, 2000[51] (six business days from the date the order was

---

[48] Attachment C to Joint Supplemental Declaration of Gertner/Bamberger at p. 34.
[49] Attachment B at p. 57. In fact, for this order, it is noted that Rhythms did not request an interval of more than 6 days.
[50] Attachment C at p. 34.
[51] Attachment B at p. 60 (Spreadsheet notes that Rhythms did not request an interval of more than 6 days.)

placed), but Verizon failed to complete the order until November 20, 2000.[52] Likewise, Verizon excluded PON number ACI2000166566 from its adjusted performance in PR-3-10 due to an apparent "Miscoded ATC" but a review of the information in Attachment B shows that Rhythms requested a six-day interval for that order as well.[53] While Rhythms did not compare each and every order excluded as a "Miscoded ATC" in Attachment C, there are at least three instances where Verizon appears to have inappropriately excluded its performance in the adjusted results set forth in Attachment C to the Gertner/Bamberger Supplemental Declaration.

The Adjusted Results. By excluding orders that 1) required manual loop qualification, 2) were delayed due to a facility miss, 3) were not X-Coded properly, and 4) were impacted by the strike, Verizon's performance improved from 63% to 83% completed within six business days.[54] As explained above, Rhythms does not necessarily agree that all of the data should have been excluded from the recalculated results. Nevertheless, even if Verizon's calculations are accurate, Verizon's performance is still well under the standard of 95%.

To make the point that its performance on CLEC orders exceeds its performance on retail orders in September and October, Verizon compares its performance to CLECs with its performance on retail ADSL orders requiring a dispatch.[55] While it is an interesting exercise to compare the results of Verizon's provisioning performance to CLECs for stand-alone xDSL loops to its retail delivery of a line-shared loop, the standard for this measure is not "parity" but rather 95% within 6 days.[56]

---

[52] Attachment C at p. 62.
[53] *See* Attachment B at p. 61 (Order received by Verizon on October 26, 2000 at 8:26pm with a requested due date of November 6, 2000.)
[54] Gertner/Bamberger Joint Supplemental Declaration at ¶ 16 (Table 2) and Attachment C at p. 1.
[55] *Id.* at ¶¶ 15-16.
[56] Because there is no retail analogue for stand-alone xDSL loops, Verizon and CLECs agreed to a standard of 95% for this metric.

In addition to the "parity" argument, Verizon also points out that the "majority of CLECs orders not completed within six days are completed within seven days."[57] As explained above, the standard is *six* business days and not *seven* business days. If the six-day standard is not enforced, Verizon will continue to push the envelope and complete CLEC orders one, two or three days beyond the standard interval. Nevertheless, Verizon's study that it completed 95% of CLECs xDSL orders within seven business days[58] demonstrates that Verizon is not provisioning DSL loop orders to CLECs within the standard interval.

C. Verizon Inappropriately Excluded Certain I-Codes From Its Special Study

In its Supplemental Filing, Verizon includes a special study on its installation quality (I-Code) performance. Verizon claims that the I-Code rates reported in its Carrier-to-Carrier performance reports "are significantly skewed by CLECs' behavior in failing to conduct acceptance testing properly."[59] To make the point, Verizon explains that it excluded from its recalculated results all I-Codes that involved acceptance-testing issues that could have been resolved at the time the CLEC tested the loop.[60] As the Sapienza/Mulcahy Joint Supplemental Declaration explains, "Verizon tagged for exclusion from the I-Code report rate the list of I-Code trouble tickets that had text entries indicating a problem that should have been discovered during acceptance testing."[61] Such text entries included among other items, load coil on the line, no continuity, and open pairs.[62] Verizon had PricewaterhouseCoopers review all of the I-Code troubles to confirm that Verizon excluded from the study any trouble with text entries that match

[57] Gertner/Bamberger Joint Supplemental Declaration at ¶ 17.
[58] *Id.* at Table 3.
[59] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 95.
[60] *Id.*
[61] Sapienza/Mulcahy Joint Supplemental Declaration at ¶ 102.
[62] *Id.*

the list that Verizon determined were appropriate indicators for troubles that could have been resolved at the time of acceptance testing.

Verizon's study shows that it excluded over half of Rhythms' I-Codes for the months of September, October and November 2000.[63] As explained in the attached Supplemental Declaration of Robert Williams, Rhythms reviewed the list of I-Codes excluded from the study and its records not match Verizon's.[64]

III. Verizon Continues to Litigate Instead of Filing its Tariff Offering for Plug and Play.

On September 29, 2000, the Massachusetts DTE issued its Order in Phase III of D.T.E. 98-57 (Phase III Order).[65] Amongst other things, that Order established that Verizon-MA must file a tariff that "would enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon's DLC electronics at the RT."[66] In making this determination, the Department was concerned that "many Massachusetts customers may be shut out of the DSL market unless provisions are made to allow for line sharing over fiber fed loops."[67] The Department was not requiring VZ-MA to offer a plug-and-play option at this time. Rather, the Department ordered VZ-MA to file a tariff including this offering for further investigation.[68] Moreover, the Department recognized that it would be:

> fundamentally unfair to CLECs, and to consumers, to allow Verizon's data affiliate . . . to deploy the technology that would allow plug and play, or to deploy the 'infrastructure to support wholesale packet transport services from Verizon's

---

[63] Lacouture/Ruesterholz Joint Supplemental Declaration at Attachments Y and AA.
[64] Williams Supplemental Declaration at ¶ 26.
[65] *Investigation by the Department on its own Motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department on May 5, 2000 to become effective June 4 and June 6, 2000 by New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts*, D.T.E. 98-57, Phase III Order, September 29, 2000.
[66] *Id.* at 72.
[67] *Id* at 71.
[68] *Id* at 72-73.

RTs' and only then file with the Department a proposed tariff offering for CLECs to do the same.[69]

Thus, in order for CLECs to have sufficient input into any plug-and-play option, the Department correctly found that VZ-MA should file a proposed tariff now, before the plug and play option is fully operational.

Despite this clear directive from the Department, on October 19, 2000, Verizon filed a Motion for Partial Reconsideration of the Department's Phase III Order. That motion requested reconsideration of, *inter alia*, the Department's directive to file a tariff that would allow for the plug and play option.[70] In that Motion, Verizon requested that "it not be required to automatically incorporate [the] 'plug and play' option into its proposed tariff offering, but that it be allowed to develop a service that meets the CLECs' needs for unbundled packet switching while taking into account the network infrastructure and FCC requirements."[71] The basis for Verizon's argument was that filing a tariff offering on plug and play is "inappropriate, premature, and unproductive because Verizon MA neither has deployed, not has any immediate plans to deploy, the requisite equipment to provision those offerings."[72] Verizon made this argument despite the Department's clear recognition in its Phase III Order that Verizon did not deploy the plug and play technology currently, and that was specifically why the Department ordered Verizon to file the tariff offering.[73]

The D.T.E. granted in part and denied Verizon's Motion for Reconsideration on this issue. The Department granted "Verizon's request to file an alternative unbundled packet

[69] *Id.* at 73 (citations omitted).
[70] *Verizon Motion for Partial Reconsideration of Phase III Order*, October 19, 2000, at 13.
[71] *Id.* at 14.
[72] *Id.*
[73] Phase III Order at 72-73. Based on proprietary documents that were produced to Rhythms by Verizon in Massachusetts and New York, it seems that Verizon does plan to deploy technology that would accommodate the plug and play option in the near-term.

switching proposal (*e.g.*, an SBC-type service in which Verizon would own, deploy, install, and maintain the line cards at RTs)."[74] The Department, however, denied "Verizon's request to file this alternative *in lieu of* the plug and play option, as set forth in our Phase III Order."[75] Thus, the Department did not unseat in any way Verizon's obligation to file a plug and play tariff offering. The Department's determination on this issue could not be any more explicit:

> We deny this aspect of Verizon's reconsideration motion because it fails to demonstrate that the Department's decision was based on error or inadvertence, or to produce any unknown or undisclosed fact that would warrant a reversal or modification of our ruling that Verizon file a plug and play tariff for further investigation. Indeed, while Verizon argues in its motion that the plug and play option is infeasible, Verizon neglects to cite to any document in the Phase III record or to provide any new information in support of this contention. The CLECs are correct that such a bald assertion cannot constitute grounds for Department reconsideration.[76]

Nonetheless, on January 29, 2001, Verizon again filed a motion with the D.T.E., this time it was a Motion for Clarification. In that Motion, Verizon complaints that Rhythms and other CLECs have stated publicly that the D.T.E.'s January 8th Order affirms CLECs' right to place CLEC-owned line cards in Verizon remote terminals.[77] Because Verizon disagrees with CLECs' characterization of the D.T.E.'s January 8th Order, Verizon requested that the Department "clarify that [the] January 8th *Order* did not modify what is clear in the Phase III Order – the Department has made no decision at this time regarding any legal, technical, or operational issue associated with plug and play arrangements but will address these in its investigation of Verizon MA's proposals."[78]

[74] *Order on Motions for Reconsideration, Clarification, Extension of Time, and Extension of Judicial Appeal Period, and Request for Reexaminaiton of Compliance Filing*, D.T.E. 98-57 Phase III-A, January 8, 2001 at 34.
[75] *Id.* (emphasis in original).
[76] *Id.*
[77] Verizon Motion for Clarification, January 29, 2001 at 6.
[78] *Id.* at 7-8.

Despite proprietary internal business documents that indicate that Verizon is planning to deploy NGDLC equipment that is capable of supporting the plug and play option, Verizon has yet to tariff a service for CLECs despite the clear mandate from the Massachusetts D.T.E. to do so. Instead, over 4 months after the Department ordered Verizon to file its tariff, Verizon continues to litigate this issue. In light of the Department's clear and continued directive, and the Commission's January 19, 2001 *Line Sharing Reconsideration Order*, Verizon must file its tariff offering on the plug and play option and CLECs must have an opportunity to review and comment on that offering before Verizon's 271 application can be approved. Currently, CLECs have no means of assessing whether Verizon's offering is indeed non-discriminatory. Because Verizon has chosen to continue to litigate this issue, and therefore, has not filed its tariff offering with the Department, it must bear the consequences of that decision.

CONCLUSION

Until Verizon remedies the issues discussed herein, its 271 application to provide interLATA services in the state of Massachusetts should be denied. Without the "carrot" of 271 approval, Verizon will not be motivated to fix the problems with line sharing in Massachusetts and other states. Likewise, until Verizon provisions xDSL loops within the six-day provisioning interval, it has not met the standard and should not be granted 271 approval. Verizon was intimately involved with the development of that standard, and should not now be permitted to argue that "parity" with its retail offering is sufficient. Finally, until Verizon stops litigating the plug and play issue in Massachusetts and files its tariff offering, CLECs have no opportunity with which to assess whether Verizon's offering will indeed be nondiscriminatory. Until these remaining issues are remedied, Verizon's application should be denied.

Respectfully submitted,

Kimberly A. Scardino
J.C.D.

Kimberly A. Scardino
Assistant General Counsel
Rhythms Links, Inc.
1625 Massachusetts Ave., NW
Washington, DC 20036
202.387.4077
202.955.6460 facsimile

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon New England, Inc.,	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a/ Verizon Long Distance), NYNEX	)	Docket No. 01-9
Long Distance Company (d/b/a/ Verizon	)	
Enterprise Solutions), and Verizon Global	)	
Network, Inc. (collectively "Verizon") for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in the State of	)	
Massachusetts	)	

SUPPLEMENTAL DECLARATION OF ROBERT WILLIAMS IN SUPPORT OF RHYTHMS LINKS INC. OPPOSITION TO VERIZON'S SUPPLEMENTAL APPLICATION FOR 271 AUTHORITY IN THE STATE OF MASSACHUSETTS

REDACTED—FOR PUBLIC INSPECTION

1. My name is Robert Williams. I am employed by Rhythms Links Inc. ("Rhythms") as Vice President of Regulatory Affairs and Deployment, Eastern Region. My business address is 8605 Westwood Center Drive, Suite 300 Vienna, Virginia 22182.

2. My background and job responsibilities are detailed in the Declaration I submitted to the Commission on October 16, 2000, in connection with Rhythms Initial Comments opposing Verizon-Massachusetts original 271 Application in Docket 00-176. I am filing this Supplemental Declaration to address issues raised in the Supplemental Filing of Verizon New England, dated January 16, 2001.

Line Sharing

3. At this time, the most important business affecting issue facing Rhythms in the Verizon region is Rhythms' inability to submit orders for line sharing in certain central offices. Verizon's failure to properly wire all of the central offices ("COs") for which Rhythms

submitted applications to Verizon some ten months ago has forced Rhythms to limit the number of line sharing orders it can send to Verizon. Despite Rhythms' numerous escalations, orders from this Commission and the New York Commission,[1] Verizon has yet to complete the necessary CO wiring work to allow Rhythms to place commercial volumes of line sharing orders.

4. In its Supplemental Filing, Verizon claims that its line sharing performance is strong and that it is processing line sharing orders in significant volumes.[2] Verizon is correct that it is processing significant volumes of line sharing orders, however, it is doing so for its separate data affiliate (VADI) and not CLECs.[3] Verizon admits that the volume of line sharing orders received from CLECs in Massachusetts has been relatively small,[4] but it fails to explain *why* such volumes have been small. While Verizon acknowledges that it has had (and continues to have) CO-build issues,[5] these acknowledgments overstate the amount of work that Verizon needed to complete as part of the project management schedule, and also attempt to minimize the impact of the harm caused by Verizon's failure to comply with the regional project management plan ordered in New York.[6] I will attempt to set the record straight as to the magnitude of the CO-wiring work Verizon had to complete for Rhythms and what remains to be done.

5. Rhythms wanted to be ready to offer line sharing from all of the central offices where it is collocated by June 6, 2000 -- the FCC-imposed deadline for ILECs to implement line

---

[1] Order Adopting Bell Atlantic-New York Line Sharing Schedule for Provision of Digital Subscriber Line Service, issued and effective April 24, 2000, attached to my original Declaration as Attachment B.
[2] Supplemental Filing at p. 28.
[3] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 144.
[4] *Id.* at ¶ 8.
[5] *Id.* at ¶¶ 136-138.
[6] *See* Order Adopting Bell Atlantic-New York Line Sharing Schedule for Provision of Digital Subscriber Line Service, issued and effective April 24, 2000, attached to my original Declaration in Docket 00-176 as Attachment B.

sharing. In order to accomplish this goal, Rhythms opted to locate its splitters in its collocation cages and reuse existing cable and pairs (commonly called CFAs). Verizon committed to Rhythms that if Rhythms were to pursue Option A (placement of splitter in collocation arrangement) and elected to reuse existing CFAs, that it would be able to support line sharing out of all designated central offices in the region[7] by June 6, 2000.[8] Based on Verizon's assurances, Rhythms pursued Option A throughout the Verizon-East region and, in accordance with the project management plan established in New York, on or before April 15, 2000, submitted applications for the necessary central office wiring work.

6. The only central office work needed to accommodate line sharing for Rhythms was simply to have Verizon take the existing spare cables that had been designated for other stand-alone DSL services and redesignate them for line sharing. In other words, Verizon had to take the spare cables that were terminated on an existing block on the frame and move them to another block on the frame marked for line sharing. In doing so, Verizon would mark or stencil the Rhythms' code on the block so that the frame technician could easily identify where on the frame the cable and pairs terminate. To complete the process, Verizon would load the CFA information into its database so that Verizon would recognize a Rhythms' order when placed.

7. For Rhythms, Verizon did not need to install splitters in any central offices or wait for Rhythms to deliver materials to Verizon.

---

[7] *Id.* at Part 2 (noting that Rhythms had submitted applications for 78 COs in Massachusetts and over 120 in New York).

[8] *Id.* at p. 2 (...Bell Atlantic-NY informed the DSL providers and other parties that it would not be able to meet the June 6, 2000 deadline for all central offices in New York in which DSL providers were currently collocated, if it employed Option C [placement of splitter equipment in the BA Central Office space] exclusively, while Option A [placement of splitter inside the DLEC collocation cage] could be provided more quickly. Following negotiations, the competitor DSL providers agreed to a schedule to give first priority to certain identified central offices, with the

8. On or about June 6, 2000, Verizon represented to Rhythms that it had completed the cabling work necessary to support line sharing in all of the central offices and that it was ready for Rhythms to begin submitting line sharing orders. At the time, Verizon also said that, in the event of a problem with any of Rhythms' orders, it would be able to fix any CFA issues within the provisioning interval. As Verizon states in one of its Supplemental Declarations, "Verizon informed CLECs that they could begin submitting line sharing orders on June 6th for a central office even where the collocation work was not complete as long as the CLEC elected to place the splitter in its own collocation cage. (This option requires less extensive collocation work on Verizon's part so Verizon could complete the required collocation work at the same time that it provisioned the order)."[9]

9. As I explained in my original Declaration of October 16, 2000, filed in Docket 00-176, when Rhythms began to submit orders for line sharing across the Verizon region, we quickly learned that Verizon's central office wiring was not complete[10] and, despite its assurances, Verizon was not able to fix the problems within the standard interval. In the period from September through November 2000, Rhythms began experiencing a significant backlog of line shared orders in all states throughout the Verizon region. Due to Verizon's inability to correct the central office wiring problems that were causing Rhythms' orders to fail, Rhythms made the business decision to stop sending in orders in central offices that we discovered *through the submission of live orders* had wiring issues.

10. After numerous escalations, meetings and conference calls with Verizon, we learned that there were four main problems with Verizon's central office rewiring work: 1) Verizon had

understanding that line sharing via Option A would be available by June 6, 2000 and line sharing via Option C would be available in 157 priority central offices applied for by the parties.")

[9] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 137.

failed to load Rhythms' CFA information into its inventory system, causing our orders to be rejected; 2) Verizon had wired the POT Bay frame incorrectly; 3) Verizon had re-terminated the CFAs on the MDF incorrectly -- in some instances, either backwards or upside down; and 4) Verizon had not stenciled Rhythms' code and pair count on the block correctly, resulting in the frame technician not being able to locate the proper placement for the wires.

11. After these problems were discovered, Rhythms demanded that Verizon go out and inspect all of its central offices to determine that the wiring had been completed correctly.[11] In October -- six months after Rhythms had submitted applications for the central office line sharing wiring work -- Verizon committed to engage in "Quality Inspections" of its central offices. These Quality Inspections did not take place in a timely fashion and apparently have only recently been completed.[12]

12. As set forth in the attached Quality Audit Update chart prepared by Verizon (Attachment A), three (3) central offices in Massachusetts are still not complete and one (1) is pending database verification. In New York, eight (8) are not complete and five (5) are pending database verification.

13. For Rhythms, this means that we are unable to submit line sharing orders in four (4) central offices in Massachusetts and thirteen (13) in New York. It is my understanding that while Verizon takes its time in remedying the situations in these central offices, and its data affiliate continues to submit thousands of orders each month, Verizon is under no obligation to pay CLECs penalties for its delay in completing the central wiring work -- work that should have been completed on June 6, 2000.

---

[10] Declaration of Robert Williams filed in Docket 00-176 at ¶¶ 38-42.
[11] *Id.* at Attachment D (minutes from October 6, 2000 meeting between Verizon and Rhythms).

14. While Verizon has completed "quality inspections" in the central offices and is in the process of completing the follow-up generated by those inspections, Rhythms has little assurance that Verizon will respond in a timely fashion to any future issues uncovered in central offices for which Rhythms has yet to submit orders. In Massachusetts, Rhythms has placed orders in ****BEGIN PROPRIETARY ** END PROPRIETARY**** central offices out of 77 and has had orders completed in ****BEGIN PROPRIETARY ** END PROPRIETARY**** of these. In New York, Rhythms has placed orders in ****BEGIN PROPRIETARY *** END PROPRIETARY**** central offices out of 142 and, as of January 30, 2001, we had orders pending in ****BEGIN PROPRIETARY ** END PROPRIETARY**** central offices. Based on these numbers, at this time, we know that Verizon only is able to successfully provision orders in 30% of the central offices in Massachusetts and 49 of the central offices in New York.

15. In Massachusetts, Rhythms has attempted to submit ****BEGIN PROPRIETARY *** END PROPRIETARY**** line sharing orders but we have only had ****BEGIN PROPRIETARY ** END PROPRIETARY**** completed to date. Only ****BEGIN PROPRIETARY ** END PROPRIETARY**** or forty-six percent (46%) of our total volume of orders to date have been cancelled for various reasons including the presence of fiber, existence of UNE-P, and provisioning delays. Nearly seven percent (7%) or ****BEGIN PROPRIETARY ** END PROPRIETARY**** orders are presently on hold and an additional twelve percent (12%) or ****BEGIN PROPRIETARY ** END PROPRIETARY**** orders are pending.

16. The situation in New York is similarly unsatisfactory. Rhythms has tried to submit ****BEGIN PROPRIETARY **** END PROPRIETARY**** orders and has had ****BEGIN**

---

[12] Lacaouture/Ruesterholz Joint Supplemental Declaration at ¶ 58 ("Verizon has completed 86 percent of such

PROPRIETARY ** END PROPRIETARY**** completed to date. Fifty-nine percent (59%), or ****BEGIN PROPRIETARY **** END PROPRIETARY****, of our orders have been cancelled for the same reasons as in Massachusetts, and two percent (2%), or ****BEGIN PROPRIETARY ** END PROPRIETARY****, orders are on hold. As of last week, we have ****BEGIN PROPRIETARY *** END PROPRIETARY**** orders pending completion.

17. It is essential that Verizon resolve the outstanding central office wiring issues. Verizon has had well over six months to remedy the situation and has failed to do so. In light of Verizon's unwillingness to dedicate the resources necessary to resolve the central office wiring issues, I suggest that the only solution is for a third party to verify that all of the central offices have been wired in accordance with the applications Rhythms submitted in April 2000. This can be achieved by having the third party accompany Verizon and Rhythms on joint meets in the central offices. This issue must be resolved once and for all, and the only way to ensure that the wiring is correct is for a neutral party to verify that the work is indeed complete.

18. I understand that one of the checklist items for evaluation of Verizon's 271 application is Verizon's ability to provision line shared loops to CLECs on a non-discriminatory basis. As I have explained above, it is obvious that Verizon has failed to comply with this requirement. Verizon has dedicated sufficient resources to allow its separate affiliate to offer line sharing to consumers in both NY and MA on a mass markets basis, all the while holding Rhythms and other CLECs at bay. Such behavior should not be tolerated.

---

inspections in Massachuseets, and expects to finish the few remaining inspections by the end of the month.")

19. I have reviewed the data Verizon has included with its Supplemental Filing as to the time it took to complete the limited number of orders Rhythms has submitted to date in Massachusetts, and would note that this data shows that Verizon missed the interval nearly every time.[13] So, in addition to the fact that Rhythms has been forced to hold orders in certain central offices, for the ones that Verizon does manage to complete, it is completing them late.

DSL Loop Performance

20. Another issue affecting Rhythms in Massachusetts, New York and the rest of the Verizon region is Verizon's inability to deliver xDSL loops to Rhythms within the six-day standard interval and deliver the loop in working condition. Just as it did in its original application, Verizon disingenuously makes the argument that the six-day interval is not important, but rather all that matters is that it delivers the loop on the committed due date—what it calls "on time."

21. As Verizon's own data shows, Rhythms routinely requests that Verizon complete its orders within the standard interval of six business days.[14] In my opinion, the six-business-day interval is already too long as it is, so it would be rare for Rhythms to request that Verizon complete the order outside of the six-business day interval. Nonetheless, when Verizon does not complete our orders within six business days, it forces Rhythms to extend the time for delivery of the line to our customer beyond an already unacceptably long interval. In addition, completion of our orders outside of the six-business-day interval increases the amount of "no access" situations that can result with our customers. If the order is completed

[13] *See* Attachment OO of Supplemental Declaration of Lacouture and Ruesterholz.

on the seventh day as opposed to the scheduled sixth day, it is possible that the end-user may have to stay home for two days (as opposed to just one day) to grant access.

22. It is my understanding that Verizon's "on-time" measurements only measure whether Verizon completed the work on the committed due date. While it is good to measure whether the loop was delivered on the due date, it is important to keep in mind that the committed due date can change for reasons caused by the ILEC. For example, if Verizon runs into a problem and is unable to complete the order on the due date, it will often call Rhythms' provisioning center and ask us to change the due date by supplementing ("supping") the order, which we do as a matter of practice. And, it is my understanding that when Rhythms changes the due date, even at the request of Verizon, it is not counted against Verizon as a missed appointment.

23. One may ask why Rhythms would agree to "supp" an order at the request of Verizon. In addition, some may suggest that we should require Verizon to "supp" the order and take it as a missed appointment so that its behavior is adequately captured by the metrics. Rhythms is not in the business of trying to make Verizon's performance look worse than it already is. We want our loops to be installed and if we are told by Verizon that the loop cannot be installed on a given date, we have no choice but to agree to change the due date.

24. By my comments, I am not suggesting that the Commission should ignore Verizon's on-time performance data as proof that it is providing CLECs with non-discriminatory access to xDSL loops. I am merely suggesting that it is also important to look at whether Verizon

[14] *See* Attachment B of Supplemental Declaration of Gertner and Bamberger (where Rhythms has asked for an interval of greater than six days, it is largely a timing issue as to the time of day that the order was submitted to Verizon (i.e. after 5pm EST)).

provisioned the loop within the standard interval. Based on the data I have reviewed, Verizon has not.

25. In its re-filed application, Verizon includes a special study on its installation quality (I-Code) performance. Verizon claims that the I-Code rates reported in its Carrier-to-Carrier performance reports "are significantly skewed by the CLECs' behavior in failing to conduct acceptance testing properly."[15] In order to prove its point, Verizon explains that it excluded all I-Codes that involved acceptance testing issues that could have been resolved at the time the CLEC tested the loop.[16]

26. On its own, Verizon determined that, for one reason or another, over half of Rhythms' I-Codes needed to be excluded from the performance calculation.[17] I had one of the members of my team review and research the I-Codes listed in Attachment Y of the Lacouture/Ruesterholz Joint Supplemental Declaration to determine whether we could have identified and resolved these problems at the time of acceptance testing. While we were not able to find information on every single order, we did find that for at least half of the I-Codes listed in Attachment Y, our records do not match Verizon's. I have provided a spreadsheet, attached hereto as Attachment B, which shows each I-Code and the corresponding acceptance testing, trouble ticket and install notes. Based on our records, it would not be appropriate for Verizon to exclude at least half of Rhythms' I-Codes from its performance results.

---

[15] Lacouture/Ruesterholz Joint Supplemental Declaration at ¶ 95.
[16] *Id.*
[17] *Id.* at Attachments Y and AA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Robert Williams

ROBERT WILLIAMS

J.C.D.

PROPRIETARY ATTACHMENTS NOT SUPPLIED

CERTIFICATE OF SERVICE

I, Jeffrey Dobson, do hereby certify on this 6th day of February, 2001, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:

Jeffrey Dobson

*Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

*Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

*Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

*Jordan Goldstein, Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

*Kyle Dixon, Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

*Rebecca Begnon, Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

*Deena Shetler, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

*Susan Pie
Policy and Programming Planning Division
Common Carrier Bureau
Federal Communication Commission
445 12th Street, S.W., Room 5-C224
Washington, D.C. 20554

*Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-450
Washington, D.C. 20554

*Janice M. Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-327
Washington, D.C. 20554

Cathy Carpino
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110

*Joshua Walls
U.S. Department of Justice
Antitrust Division, TTF
1401 H Street NW, Suite 8000
Washington, D.C. 20005

*Luin Fitch
Sherri Wilson
Susa Witten
U.S. Department of Justice, Antitrust Division
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530

*ITS
1231 20th Street, N.W.
Washington, D.C. 20036

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

~~o~~ Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

1 DISKETTE